

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4872 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BHAGWANJIBHAI GOKALBHAI KALARIA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 4872 of 2001
MR YOGESH S LAKHANI for Petitioner No. 1
MR K.T.DAVE, AGP for Respondent No. 1-2,4
MS P.J.DAVAWALA, for Respondent No. 3
RULE SERVED BY DS for Respondent No. 1,3-4
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/09/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the

Constitution of India, the petitioner/detenu who has been detained by the District Magistrate, Rajkot vide order dated May 16, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, ('PBM Act' for short), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order of direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is dealing in the free-shell kerosene. The petitioner is unauthorisedly taking blue kerosene and selling as white kerosene by getting higher price and therefore, his activity is profiteering to his business and thereby prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain the petitioner on the grounds stated in the impugned order.

3. It is contended by Mr. Y.S.Lakhani, learned advocate for the petitioner that non-supply of legible copies of the documents to detenu which has caused serious prejudice to his right of making an effective representation before the authority and thereby it violates the fundamental right enshrined under Article 22(5) of the Constitution. Besides this, he also contended that there is a delay of about one and a half month in passing the order of detention from the date of the alleged activity of the petitioner and on the aforesaid two grounds, order of detention vitiated. He, therefore, prayed to allow the petition by quashing and setting aside the order of detention and setting the petitioner at liberty forthwith.

4. Mr. K.T.Dave, learned AGP appears for respondent Nos. 1, 2 & 4 and contested the petition by filing two affidavits in reply; one sworn by Mr. Mr P.G.Vyas, Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and the other sworn by Mr. P.N.Patel, District Magistrate, Rajkot, the detaining authority.

5. Ms. P.J.Davawala, learned advocate appeared on behalf of Respondent No. 3 and opposed the petition by making her oral submissions.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also

perused the averments made in the petition and the documents annexed therewith and also considered the affidavits in reply filed by the contesting respondents and the impugned order - Annexure -A to the petition.

7. A similar question arose before this Court in the case of VIKRAMSINH PRAVINSHIH RANA V. STATE OF GUJARAT AND ANOTHER, 1988 (2) GLH 414. In that case some of the pages of the judgement supplied to the detenu were not legible and the Division Bench of this Court held that it would amount to non-communication of the grounds and it also adversely affected the right of the petitioner's of making representation to the concerned authority and, therefore, the order of detention was quashed and set aside.

8. Applying the aforesaid principles to the facts of the present case, at the cost of repetition, be it stated that some of the pages of the documents supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority which has infringed the fundamental right enshrined under Article 22(5) of the Constitution. The order of detention stands vitiated on this ground alone and the petition deserves to be allowed.

9. It may be appreciated that non-supply of the legible copies of the documents to the petitioner is not disputed by Mr. K.T.Dave, learned AGP.

10. For the foregoing reasons, petition succeeds and accordingly it is allowed. The impugned order of detention dated May 16, 2001 passed against the petitioner/detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)
Jayanti*